

Application Serial No. 10/667,248
Amendment dated September 24, 2007
Reply to Office Action dated June 22, 2007

REMARKS/ARGUMENTS

Applicant submits, contemporaneously herewith, a Request for Continued Examination pursuant to 37 C.F.R. § 1.114.

Claims 1-9 and 11-28 are pending. Claims 2-9, 18-20, 23, 24, and 26-28 have been withdrawn. Claims 1, 11-17, 21, 22, and 25 have been rejected.

Claim Rejections - 35 U.S.C. § 102(b)

Claims 1, 11, 13, 15-17, 22, and 25 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,228,086 to Wahl et al ("Wahl '086").

Wahl '086 discloses nail 1, shown in Fig. 1, including cylindrical proximal portion 2 having longitudinal bore 5 extending therethrough. Longitudinal bore 5 includes partial internal thread 6. Insert 7 is configured for receipt within bore 5 and includes longitudinal bore 34 and guiding bores 29. Guiding bores 29 are configured to receive fixing screws 18 of fixing bolt 19, as shown in Fig. 1. Cap screw 21 is configured to correspond to the external diameter of insert 7 and engage threaded portion 6 of nail 1. Nail 1 further includes transversal hole 10 configured to receive one of fixing screws 18.

Applicant respectfully submits that amended independent Claims 1 and 25 are not anticipated by Wahl '086, as Wahl '086 fails to disclose each and every limitation called for in amended independent Claims 1 and 25. Specifically, amended independent Claim 1 calls for a bone fixing system including, *inter alia*, a nail, the nail comprising a longitudinal axis, *three transverse bores each defining a longitudinal axis, wherein each of the longitudinal axes defined by the three transverse bores is non-parallel and non-intersecting with respect to both of the other of the longitudinal axes of the transverse bores*, and three screws which can be guided through the transverse bores formed in the nail, the transverse bores being configured so as to define an orientation and a position of a screw with respect to the longitudinal axis of the nail, wherein the spatial orientation and position imposed on the screw guided through one of the transverse bores is different in three dimensions for each of the three transverse bores. Similarly, amended independent Claim 25 calls for a bone fixation nail including, *inter alia*, a longitudinal axis, a longitudinal bore, and three transverse bores *each defining a longitudinal axis, wherein each of the longitudinal axes defined by the three transverse bores is non-parallel and non-intersecting with respect to both of the other of the longitudinal axes of the transverse bores*, wherein the transverse bores are configured to define a different spatial orientation and a position in three dimensions of a member

Application Serial No. 10/667,248
Amendment dated September 24, 2007
Reply to Office Action dated June 22, 2007

inserted through each transverse bore, each of the transverse bores defining a different angle with respect to the longitudinal axis of the nail.

In contrast to amended independent Claims 1 and 25, Wahl '086 discloses a pair of transverse bores 29 which are parallel to one another. Moreover, nowhere does Wahl '086 disclose or suggest forming three transverse bores each defining a longitudinal axis, wherein each of the longitudinal axes defined by the three transverse bores is non-parallel and non-intersecting with respect to both of the other of the longitudinal axes of the transverse bores.

Thus, for the foregoing reasons, Applicant respectfully submits that amended independent Claims 1 and 25, as well as Claims 11, 13, 15-17, and 22, which depend therefrom, are not anticipated by Wahl '086.

Claim Rejections - 35 U.S.C. § 103(a)

Claim 21 is rejected under 35 U.S.C. § 103(a) as being obvious over Wahl '086 in view of U.S. Patent No. 6,416,516 to Stauch et al ("Stauch '516").

In forming the rejection, the Examiner relies on Wahl '086 as disclosing each and every limitation of amended independent Claim 1, from which Claim 21 depends. However, for at least the reasons set forth above, Wahl '086 fails to disclose each and every limitation of amended independent Claim 1. The Examiner's additional citation of Stauch '516 fails to overcome this deficiency as neither Stauch '516 nor Wahl '086, either alone or in combination, disclose or suggest a bone fixing system including, *inter alia*, a nail comprising a longitudinal axis, and three transverse bores *each defining a longitudinal axis, wherein each of the longitudinal axes defined by the three transverse bores is non-parallel and non-intersecting with respect to both of the other of the longitudinal axes of the transverse bores*, the transverse bores being configured so as to define an orientation and a position of a screw with respect to the longitudinal axis of the nail.

Thus, Applicant respectfully submits that Claim 21, which depends from amended independent Claim 1, is not obvious over Wahl '086 in view of Stauch '516.

Claims 1, 11-17, and 25 are rejected under 35 U.S.C. § 103(a) as being over U.S. Patent No. 4,862,883 to Freeland ("Freeland '883").

Freeland '883 discloses intramedullary nail N, shown in Fig. 1, including proximal end portion 11 and distal end portion 12. An elongate anchor screw S is configured for

Application Serial No. 10/667,248
Amendment dated September 24, 2007
Reply to Office Action dated June 22, 2007

receipt through and is axially aligned with screw apertures 55, 56 in opposing sides of rod R, as shown in Fig. 3.

In contrast to amended independent Claims 1 and 25, Freeland '883 fails to disclose or suggest a nail including, *inter alia*, three transverse bores each defining a longitudinal axis, wherein each of the longitudinal axes defined by the three transverse bores is non-parallel and non-intersecting with respect to both of the other of the longitudinal axes of the transverse bores.

Applicant points out that the additional bores and screws as claimed in the present invention is not merely duplicative of the essential working parts of a device, as cited by the Examiner. The multiple bores, as required by the amended independent claims of the present application, must be configured to each define a longitudinal axis, wherein each of the longitudinal axes defined by the three transverse bores is non-parallel and non-intersecting with respect to both of the other of the longitudinal axes of the transverse bores. As a result, the nail may be secured along multiple axes, that are rotated with respect to the longitudinal axis of the nail. Simply disclosing a single bore configured for a specific orientation position of a single screw does not disclose or suggest multiple bores adapted to receive multiple screws, nor does it suggest configuring the bores to orient and position multiple screws along non-parallel and non-intersecting axes.

For at least the foregoing reasons, Applicant respectfully submits that amended independent Claims 1 and 25, as well as Claims 11-17, which depend therefrom, are not obvious over Freeland '883.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicant respectfully submits that the application is in condition for allowance and respectfully requests allowance thereof.

In the event Applicant has overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicant hereby petitions therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Application Serial No. 10/667,248
Amendment dated September 24, 2007
Reply to Office Action dated June 22, 2007

Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



Matthew B. Skaggs
Registration No. 55,814

Attorney for Applicants

MBS/nw

BAKER & DANIELS LLP
111 East Wayne Street, Suite 800
Fort Wayne, IN 46802
Telephone: 260-424-8000
Facsimile: 260-460-1700

Enc. Return Postcard

CERTIFICATION OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: September 24, 2007

MATTHEW B. SKAGGS, REG. NO. 55,814
Name of Registered Representative


Signature

September 24, 2007
Date